

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILAGROS IMPORTS LIMITED, a
New York corporation,

Plaintiff,

v.

PROGRESS VANTAGE LIMITED,
a foreign corporation,

Defendant.

**DECLARATION OF IRENE-LUISA
TORRES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

07-CV-3215 (SHS)

IRENE-LUISA TORRES, hereby declares the truth of the following under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am the owner of Milagros Imports Limited ("Milagros"), the Plaintiff in the above-captioned action. I make this statement based on my personal knowledge of the facts set forth herein and in support of Plaintiff's Motion for Summary Judgment.

2. I incorporated Milagros as a corporation under the laws of the State of New York on October 1, 2003 after 20 years of experience in the footwear and related industries. Milagros grew out of my long-standing personal interest of developing and selling footwear and spa products – to my specifications – under brands that I could own and control.

3. Since its inception, Milagros has designed and marketed its footwear and spa products to retailers throughout the United States and Canada, including Macy's, Filene's Basement, Marshalls, and TJ Maxx. In addition to the "BETTA" mark, Milagros sells goods under the "BETTA Spa" mark, the "I. Luisa Torres" mark, private label, as well as generic marks (no marks).

4. To jump-start Milagros in the highly competitive U.S. footwear market, I called on friendships that I had developed during my years in the industry. One of those friends was William Wong. Among other things, Mr. Wong loaned me \$25,000 to help me begin Milagros's business operations. That loan has since been fully repaid. Attached at Exhibit 1 is a true and correct copy of all invoices from, and payments to, Progress Vantage Limited ("PVL") by Milagros, including repayment of the loan.

5. I also called on John Lau, another friend and the owner of ARDA Industrial LTD, which is a packaging, ticket, and label manufacturer based in Hong Kong. Mr. Lau loaned Milagros \$50,000. In addition, other manufacturers including Flicker Footwear and Topper Embroidery provided Milagros with shipments on credit and interest-free, allowing Milagros to send payment once it was received by Milagros's customers.

6. In response to the help given to me by Mr. Wong, Mr. Lau, and Flicker Footwear and Topper Embroidery in getting Milagros started, Milagros sent business to PVL, ARDA Industries LTD, Flicker Footwear, and Topper Embroidery, which over the course of Milagros's first two years in business, were the primary manufacturers of Milagros's products.

7. During Milagros's first three years in business, Milagros paid PVL over \$850,000 to manufacture products. *See* Exhibit 1 (referenced in paragraph 4, above). Footwear manufactured by PVL for Milagros included footwear with the "BETTA" mark, the "I. Luisa Torres" mark, and footwear with no marks.

8. I recognized that for Milagros to be successful, it needed its own brands for its products. At the time that I was establishing Milagros in the Fall of 2003, I was looking for potential names that I could trademark for use in the U.S.

9. Mr. Wong indicated that the "BETTA" mark, for which PVL had manufactured footwear in the 1990s for an Australian company and for which PVL was manufacturing footwear for sale in mainland China, was available for use in the U.S. market.

10. Based on my understanding that the "BETTA" mark was available for use in the U.S., I chose to adopt the term "BETTA" as one of Milagros's trademarks and use it on a line of products that Milagros has since designed, marketed, and sold to retailers in the U.S.

11. There has never been an oral or written license and exclusive distribution agreement between me and Mr. Wong or between Milagros and PVL.

12. At the time I was starting Milagros, I understood that, as my friend and in light of our past business relationship, Mr. Wong was helping Milagros find a name that it could develop as its own brand in the U.S. As an industry person who had never before owned a business, I sent a number of e-mails to Mr. and Mrs. Wong to try to understand the background of the "BETTA" mark, whether any parameters existed to limit its use in the U.S., and to confirm that it would be Milagros's to own. I am not a lawyer. What mattered to me was that Milagros would be able to own the "BETTA" mark in the U.S. and control its development as my Milagros's brand.

13. On November 22, 2006, I received an e-mail from Mr. Wong regarding his alleged "sale" of the "BETTA" mark in the U.S. Attached at Exhibit 10 is a true and correct copy of that November 22, 2006 e-mail. During the remainder of 2006, PVL continued to fill Milagros's orders for footwear, including footwear with the "BETTA" mark.

14. In 2006, I learned that PVL had applied to register the "BETTA" mark in the U.S. To protect Milagros's rights in the "BETTA" mark, Milagros timely opposed PVL's U.S.

trademark application, asserting fraud on the United States Patent and Trademark Office, among other grounds. Attached at Exhibit 2 is a true and correct copy of Milagros's opposition.

15. Milagros simultaneously filed its own application to register the Mark for use on "footwear, slippers, socks, sandals, booties, gloves, robes; shower wrap sets comprised of shower wraps, slippers, and head wraps; slipper sets comprised primarily of slippers and one or more of socks, pumice stones, toe separators, therapeutic eye masks, and head wraps" in Class 25 as shown in U.S. Application Serial No. 77,170,813. Attached at Exhibit 3 is a true and correct copy of Milagros's application for registration of the "BETTA" mark.

16. Milagros had high hopes when it entered into a relationship with PVL as one of its manufacturers of "BETTA" footwear. Milagros had hoped to send PVL millions of dollars in business during the first several years.

17. The products to which Milagros first affixed the "BETTA" mark were manufactured by Flicker Footwear and Topper Embroidery. Milagros's use of the "BETTA" mark in commerce in the United States has been continuous since at least as early as April 26, 2004.

18. Attached at Exhibits 4, 5, 6, 7, 8, and 9 are true and correct copies of e-mails between me and Mr. and Mrs. Wong on August 10, 2003, August 11, 2003, September 28, 2003, September 30, 2003, and October 2, 2003, respectively.

SIGNED this 17th day of March 2008 at New York, New York.


Irene-Luisa Torres